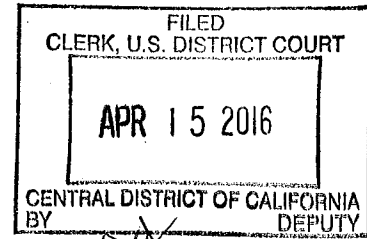


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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
19

20 JOHN KERR, individually and on
behalf of all others similarly situated,

21 Plaintiff,

22 vs.

23 FROM YOU FLOWERS, LLC, a
24 Delaware limited liability company, and
DOES 1-50, inclusive,
25 Defendants.
26

CASE NO. 2:16-cv-00935-MWF-E

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

27

28

1 Pursuant to Fed. R. Civ. P. 26(c)(1)(G), Plaintiff John Kerr ("Plaintiff") and
2 From You Flowers ("Defendant") (collectively, "the Parties"), hereby stipulate that,
3 subject to the Court's approval, the following procedures shall be followed in this
4 action.

5 1. A. PURPOSES AND LIMITATIONS

6 Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation may be
9 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
10 enter the following Stipulated Protective Order. The parties acknowledge that this
11 Order does not confer blanket protections on all disclosures or responses to
12 discovery and that the protection it affords from public disclosure and use extends
13 only to the limited information or items that are entitled to confidential treatment
14 under the applicable legal principles. The parties further acknowledge, as set forth
15 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
16 file confidential information under seal; Civil Local Rule 79-5 sets forth the
17 procedures that must be followed and the standards that will be applied when a party
18 seeks permission from the Court to file material under seal.

19 B. GOOD CAUSE STATEMENT

20 Federal Rule of Civil Procedure 26(c) permits the granting of a protective
21 order upon a showing of good cause, and indicates, in subpart (c)(1)(G) of Rule 26,
22 that the protection of a trade secret or other confidential research, development, or
23 commercial information is a proper basis for the issuance of a protective order. This
24 action is likely to involve trade secrets, customer and pricing lists and other valuable
25 research, development, commercial, financial, technical and/or proprietary
26 information for which special protection from public disclosure and from use for any
27 purpose other than prosecution of this action is warranted. Such confidential and
28 proprietary materials and information consist of, among other things, confidential

1 business or financial information, information regarding confidential business
2 practices, or other confidential research, development, or commercial information
3 (including information implicating privacy rights of third parties), information
4 otherwise generally unavailable to the public, or which may be privileged or
5 otherwise protected from disclosure under state or federal statutes, court rules, case
6 decisions, or common law. Accordingly, to expedite the flow of information, to
7 facilitate the prompt resolution of disputes over confidentiality of discovery
8 materials, to adequately protect information the parties are entitled to keep
9 confidential, to ensure that the parties are permitted reasonable necessary uses of
10 such material in preparation for and in the conduct of trial, to address their handling
11 at the end of the litigation, and serve the ends of justice, a protective order for such
12 information is justified in this matter. It is the intent of the parties that information
13 will not be designated as confidential for tactical reasons and that nothing be so
14 designated without a good faith belief that it has been maintained in a confidential,
15 non-public manner, and there is good cause why it should not be part of the public
16 record of this case.

17 2. DEFINITIONS

18 (a) Action: this pending federal law suit.

19 (b) Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 (c) "CONFIDENTIAL" Information or Items: information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
24 Good Cause Statement.

25 (d) Counsel: Outside Counsel of Record and House Counsel (as well as
26 their support staff).

27 (e) Designating Party: a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL.”

2 (f) Disclosure or Discovery Material: all items or information, regardless
3 of the medium or manner in which it is generated, stored, or maintained (including,
4 among other things, testimony, transcripts, and tangible things), that are produced or
5 generated in disclosures or responses to discovery in this matter.

6 (g) Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as
8 an expert witness or as a consultant in this Action.

9 (h) House Counsel: attorneys who are employees of a party to this Action.
10 House Counsel does not include Outside Counsel of Record or any other outside
11 counsel.

12 (i) Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 (j) Outside Counsel of Record: attorneys who are not employees of a party
15 to this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm which
17 has appeared on behalf of that party, and includes support staff.

18 (k) Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 (l) Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 (m) Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 (n) Protected Material: any Disclosure or Discovery Material that is
28 designated as “CONFIDENTIAL.”

1 (o) Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the
10 trial judge. This Order does not govern the use of Protected Material at trial.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents, items,
27 or communications for which protection is not warranted are not swept unjustifiably
28 within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) For information in documentary form (apart from transcripts of
16 depositions or other pretrial or trial proceedings), that the Producing Party affix the
17 legend "CONFIDENTIAL" on each page that contains Protected Material. If only a
18 portion or portions of the material on a page qualifies for protection, the Producing
19 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins).

21 (b) For testimony taken at a deposition, conference, or hearing, that a
22 statement be made on the record or other proceeding that the information is
23 "Confidential" under the terms of this Protective Order or by making such
24 designation within twenty (20) calendar days after delivery of the transcript to such
25 party.

26 (c) for information produced in some form other than documentary and for
27 any other tangible items, that the Producing Party affix in a prominent place on the
28 exterior of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the Designating Party’s right to secure protection under this Order for such material.
7 Upon timely correction of a designation, the Receiving Party must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of this
9 Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on
17 the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party’s designation until the Court rules on the
23 challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this
27 Action only for prosecuting, defending, or attempting to settle this Action. Such
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the Action has been terminated, a
2 Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
8 ordered by the Court or permitted in writing by the Designating Party, a Receiving
9 Party may disclose any information or item designated "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this Action

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 "Acknowledgment and Agreement to Be Bound" (Exhibit A)

18 (d) the Court and its personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in
26 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
27 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
28 they will not be permitted to keep any confidential information unless they sign the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
2 agreed by the Designating Party or ordered by the Court. Pages of transcribed
3 deposition testimony or exhibits to depositions that reveal Protected Material may be
4 separately bound by the court reporter and may not be disclosed to anyone except as
5 permitted under this Stipulated Protective Order;

6 (i) any mediator or settlement officer, and their supporting personnel,
7 mutually agreed upon by any of the parties engaged in settlement discussions; and

8 (j) to companies that provide communications services for telephones
9 used by Plaintiff, or any potential class member, or Defendant, provided that such
10 access will be given solely for the purpose of seeking the preservation or production
11 of non-content subscriber information, information will only be provided to the
12 extent necessary to accomplish that purpose, and each Party will copy the other
13 Party on all correspondence with the communications services providers.

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
15 IN OTHER LITIGATION

16 If a Party is served with a subpoena or a court order issued in other litigation
17 that compels disclosure of any information or items designated in this Action as
18 “CONFIDENTIAL,” that Party must:

19 (a) promptly notify in writing the Designating Party. Such notification
20 shall include a copy of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or
22 order to issue in the other litigation that some or all of the material covered by the
23 subpoena or order is subject to this Protective Order. Such notification shall include
24 a copy of this Stipulated Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be
26 pursued by the Designating Party whose Protected Material may be affected.

27

28

1 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this Court
21 within 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party's confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving
24 Party shall not produce any information in its possession or control that is subject to
25 the confidentiality agreement with the Non-Party before a determination by the
26 Court. Absent a court order to the contrary, the Non-Party shall bear the burden and
27 expense of seeking protection in this Court of its Protected Material.

28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the "Acknowledgment and
9 Agreement to Be Bound" that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 Under Rule 502 of the Federal Rules of Evidence and Rule 26(b)(5)(B) of the
13 Federal Rules of Civil Procedure, incorporated herein by reference, the inadvertent
14 or unintentional disclosure by the Producing Party or non-party of information
15 subject to the attorney-client privilege or work-product doctrine, or any other
16 applicable privilege or immunity, shall not be deemed a waiver in whole or in part
17 of the Party's or nonparty's claim of privilege or work-product immunity, either as
18 to the specific information disclosed or as to any other information relating thereto
19 or on the same or related subject matter. If a Party or non-party has inadvertently
20 produced information subject to a claim of immunity or privilege, the Parties shall
21 comply with their obligations under Fed. R. Evid. 502 and Fed. R. Civ. P.
22 26(b)(5)(B).

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
5 only be filed under seal pursuant to a court order authorizing the sealing of the
6 specific Protected Material at issue. If a Party's request to file Protected Material
7 under seal is denied by the Court, then the Receiving Party may file the information
8 in the public record unless otherwise instructed by the Court.

9 Notwithstanding the provisions contained in this Protective Order, the parties
10 may meet and confer and agree to the redaction of personal information of
11 Defendants' customers or other individuals, such as information that must be
12 redacted pursuant to Civil Local Rule 5.2-1, phone numbers, credit card numbers,
13 and/or other personal or private information, prior to filing such "Confidential"
14 information with the Court in order to avoid the need for sealing the documents or
15 seeking permission from the Court to file such documents under seal.

16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material to the Producing Party or destroy such material. As used in
20 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving
23 Party must submit a written certification to the Producing Party (and, if not the same
24 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
25 (by category, where appropriate) all the Protected Material that was returned or
26 destroyed and (2) affirms that the Receiving Party has not retained any copies,
27 abstracts, compilations, summaries or any other format reproducing or capturing any
28 of the Protected Material. Notwithstanding this provision, Counsel are entitled to

1 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if such
4 materials contain Protected Material. Any such archival copies that contain or
5 constitute Protected Material remain subject to this Protective Order as set forth in
6 Section 4 (DURATION).

7 14. Any violation of this Order may be punished by any and all appropriate
8 measures including, without limitation, contempt proceedings and/or monetary
9 sanctions.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11
12 Dated: April 14, 2016

DOSTART HANNINK & COVENEY LLP

13

14

/s/ James T. Hannink

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JAMES T. HANNINK
Attorneys for Plaintiff

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17 Dated: April 14, 2016

NOSSAMAN LLP

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/s/ Steven E. Knott

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STEVEN E. KNOTT
Attorneys for Defendant

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22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23

24 Dated: 4/15/16

25

26


Charles F. Eick
United States Magistrate Judge

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28

Certification of Compliance with C.D. Cal. L.R. 5-4.3.4

I hereby certify that pursuant to C.D. Cal. L.R. 5-4.3.4, I have obtained the authorization from the above signatories to file the above-referenced document, and that the above signatories concur in the filing's content.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 14, 2016.

NOSSAMAN LLP

/s/ Alexander J. Suarez

ALEXANDER J. SUAREZ

Attorneys for Plaintiff

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

JOHN KERR, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FROM YOU FLOWERS, LLC, a
Delaware limited liability company, and
DOES 1-50, inclusive,

Defendants.

CASE NO. 2:16-cv-00935-MWF-E

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, in connection with the above-
caption lawsuit, hereby acknowledge that I am to be provided access to confidential
information supplied by other parties and/or non-parties, as defined in the Protective
Order dated _____.

My address is
_____.

I certify my understanding that the confidential information is being provided
to me pursuant to the terms and restrictions of the aforesaid Protective Order and
that I have been given a copy of and have read and understood my obligations under
that Protective Order. I hereby agree to be bound by the terms of the Protective
Order. I understand that the confidential information and my copies or notes relating
thereto may be disclosed to or discussed with only those persons permitted by the
Protective Order to receive such information.

I will return on request all materials containing confidential information,

1 copies thereof and notes that I have prepared relating thereto, to outside counsel of
2 record for the party with whom I am associated or from whom I received
3 information or material designated as "Confidential."

4 I hereby submit to the jurisdiction of this Court for the purpose of
5 enforcement of the Protective Order and waive any and all objections to jurisdiction
6 and venue.

7 Respectfully submitted,

8
9 Dated: _____

By: _____

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